

6

merger applications cleared

2

merger applications declined

(the first mergers declined since 2018)

111

average number of working days taken for merger clearance applications

(average of 88 for approved and 180 for declined)

1

authorisation (taking 149 working days)

Significant developments in 2024



23 February

The Commerce Commission (NZCC) has updated Cartel Leniency and Immunity Policy

The NZCC has updated its Cartel Leniency and Immunity Policy for the first time in 20 years, and for the first time since the criminalisation of cartel conduct in 2021. The aim of the policy is to destabilise cartels through incentivising disclosure in exchange for leniency. The 2024 updates aim to provide more clarity on eligibility for leniency.

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29 February

NZCC has issued its first ex-post merger review

The Commerce Commission (NZCC) has issued its first ex-post merger review findings report, following a review of 13 merger applications assessed between 2014 and 2019. The report found that:

- the likelihood and extent of potential entry and expansion was commonly overstated by market participants;
- the ability and likelihood of third parties to exercise countervailing buyer power tends to be overestimated by market participants; and
- dynamic markets may require alternative frameworks for defining the relevant markets and assessing likely competitive effects.

Ongoing reviews will be undertaken and published biennially, with the next report due in 2026.

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17 July

First merger application declined since 2018

The merger application of DJ developers Alpha Theta and Serato is the first merger to be declined by the NZCC in more than six years. After the Overseas Investment Office referred the case to the NZCC, the NZCC concluded that the merged entity would be unlikely to face competitive constraints, likely resulting in unilateral effects.

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30 July

NZCC updates Enforcement Response Guidelines

The NZCC has updated their Enforcement Response Guidelines to better reflect their evolving approach to enforcement. The previous guidelines had not been updated since 2013. The updated guidelines highlight the importance the NZCC places on self-reporting and overall collaboration.

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8 August

Foodstuffs North Island penalised for anti-competitive land covenants

The Wellington High Court has issued Foodstuffs North Island with a \$3.25 million pecuniary penalty for its use of anti-competitive land covenants with the purpose of blocking competitors. The penalty was the largest issued to date under section 28 of the Commerce Act, reflecting the seriousness of the conduct.



20 August

Market study into personal banking concludes

The NZCC concluded its 14-month long competition study into factors impacting personal banking, publishing its final report in August. The report sets out NZCC's findings, followed by 14 recommendations. The recommendations seek to improve competition through supporting new entry and expansion, reducing regulatory barriers to competition, and empowering consumers.



19 September

Pleas entered for New Zealand's first criminal cartel case

Last December, the NZCC filed its first criminal cartel charges against two construction companies and their directors for allegedly engaging in bid rigging. The parties entered their pleas in September, with one company and its director entering guilty pleas and the other pleading not guilty. The trial is set for October 2025, with proceedings expected to last three weeks.



1 October

Foodstuffs merger clearance declined

Last December, Foodstuffs North Island and Foodstuffs South Island applied for NZCC clearance to merge into one New Zealand owned national grocery co-operative. The parties currently share ownership of brands including New World, PAK'nSAVE, Four Square and Pams. In October, the NZCC declined the application, the first case in which the NZCC cited buyer power/demand-side concerns as the reasons for doing so. Foodstuffs have filed a notice of appeal in the High Court.



1 November

NZCC files proceedings against GIB manufacturer for anti-competitive behaviour

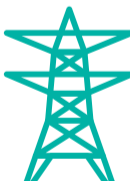
The NZCC has filed proceedings against Winstone Wallboards, a subsidiary of Fletcher Buildings, that manufactures and supplies GIB-branded plasterboard. The NZCC alleges that Winstone misused its market power and entered into arrangements that substantially lessened competition by using tiered rebates with building supplies merchants. This is a rare case in which the NZCC has challenged rebate arrangements. The time relevant to the proceedings predates the 2023 amendment to the misuse of market power prohibition, and as such the amended prohibition will not be at issue in this case.

On the horizon for the new year



Updates expected to Merger and Acquisition Guidelines

The NZCC is considering updating its Merger and Acquisitions Guidelines and the accompanying Advisory Note on the use of quantitative analysis in merger analysis. The guidelines have not been substantially updated since 2013, and we anticipate substantial progress to be made in the new year.



Energy Competition Task Force established

The NZCC and Electricity Authority recently established the Energy Competition Task Force to manage security of supply and reduce prices in the electricity market. The Task Force's two key objectives are to enable new generators and independent retailers to enter and better compete in the market, and to provide more options for end users of electricity. Next year will likely see the Task Force publishing consultation papers in February and April, with decisions about changes to the Electricity Code expected in June.

Hot topics on the global radar for 2025



Australia prepares to move to a mandatory clearance regime

The Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024 is currently before the Australian Parliament, with the intent of introducing a new merger regime. All transactions that meet the notification thresholds will be required to seek clearance from the Australian Competition and Consumer Commission before completion.



New European Commissioner for Competition

After ten years, the current European Commissioner for Competition, Margrethe Vestager, has stepped down. The Vestager era has been hugely influential on competition law across the world, particularly regarding big tech enforcement. The new Commissioner is expected to be Spain's Vice Prime Minister, Teresa Ribera Rodríguez. We will await with interest to see her priorities unfold over the five-year term.



Re-election of Trump raises antitrust uncertainty

Following increased scrutiny of mergers and acquisitions under the Biden administration, the re-election of President Trump raises questions about the future of antitrust policy and enforcement in the USA. While more certainty will be provided once Trump confirms who will head the Department of Justice Antitrust Division and chair the Federal Trade Commission, commentators believe a focus on healthcare mergers and other areas where consumers face high prices will likely continue.

Any questions? Talk to one of our experts



Troy Pilkington
Partner
Competition & Consumer Law
troy.pilkington@russellmcveagh.com
+64 9 367 8108



Bradley Aburn
Partner
Competition & Consumer Law
bradley.aburn@russellmcveagh.com
+64 9 367 8816



Petra Carey
Partner
Competition & Regulation
petra.carey@russellmcveagh.com
+64 9 367 8831